

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0192P

Income Tax

Fiscal Years ending October 31, 1995 and October 31, 1996

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

The negligence penalty was assessed as a result of an income tax audit for the fiscal years ending October 31, 1995 and October 31, 1996.

The corporation provides and installs quality interior accommodations for the marine industry. They provide a full range of services including design, material supply, manufacturing and installation for all types of vessels. The taxpayer has no business locations in Indiana. The taxpayer's nexus consists of construction work on a boat located in Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the negligence penalty should not be assessed against the taxpayer as it was the taxpayer's CPA who made the error and it is the CPA who should be responsible for the penalty. The Department argues the CPA is an agent of the taxpayer, and therefore, any error made by the CPA becomes the responsibility of the taxpayer.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary

reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer responsible for the CPA’s ignorance of Indiana listed tax laws. As such, the negligence penalty is proper and the penalty protest is denied.

FINDING

The taxpayer’s penalty protest is denied.

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